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# Supreme Court of the United States

OCTOBER TERM, 1933

## No. 400

CITY OF MARION, ILLINOIS, *a Municipal Corporation, et al.*,
*Petitioners,*

vs.

BEN SNEEDEN, *as Receiver of the* CITY NATIONAL BANK OF HERRIN, ILLINOIS,
*Respondent.*

### SUPPLEMENTAL SUGGESTIONS BY AMICI CURIAE ON BEHALF OF THE PHILIPPINE ISLANDS

1. The primary question is of the meaning of the grant by the Congress to national banks of

> "all such *incidental powers* as shall be necessary to carry on the business of banking * * * receiving deposits,"

in Section 8 of the National Banking Act of June 3, 1864, c. 106, 13 Stat. 99, 101; Rev. Stat., Sec. 5136. Do such "incidental powers" include the power to pledge assets as security for deposits,—specifically for public deposits?

This is not a new statute; it has been in force, unchanged, for almost seventy years. Its meaning does not change with the advent of new theories of public policy. If there be need for change, that is for the legislative authority, not for the courts.

The question demands an *historical inquiry. What was the sense in which the Congress used this phrase when it enacted the statute seventy years ago, in 1864?* What were the "incidental powers" then generally understood as "nec-

essary to carry on the business of banking * * * receiving deposits"? Because, of course, the Congress will be presumed to have used the words in their ordinary meaning, as then generally understood.

To arrive at the "ordinary meaning" of the phrase at that time,—what may be called its "dictionary meaning", —recourse must be had to the same methods by which a lexicographer determines the meaning of words. He collates and quotes uses of the word or phrase in current writings; inquires as to its use and meaning in ordinary day to day speech. But where, as here, the question is of the meaning of the word or phrase, as it was used in a particular document some seventy years ago, there he must turn to its use in writings of the period.

Applying a similar lexicographer's method here, we may have recourse to: (1) Prior decisions of the courts defining or illustrating the "incidental powers" of banks which may be presumed to have been in the contemplation of the Congress when the statute was enacted; (2) Text writers; (3) Subsequent legislative interpretations of this statute by the Congress itself, by the legislatures of Territories under the control of the Congress, and by State legislatures; and (4) Administrative interpretations by officials charged with its administration, particularly by the Comptroller of the Currency.

Looking to these sources we find: (1) In the only reported court decisions in which the question appears to have been considered prior to 1864, this court and also the Court of Appeals of the State of New York, had indicated that such a power as that here in question to pledge assets as security for public deposits was included among the bank's "incidental powers"[1]; (2) No text writer prior to 1864, nor for more than fifty years afterwards, appears even to have questioned this power,—indeed, in a standard work,

[1] *United States* v. *Robertson*, 5 Pet. (30 U. S.) 641 (MARSHALL C.J.; 1831). *Planters Bank* v. *Sharp*, 6 How. (47 U. S.) 300 (WOODBURY J.; 1848). *Smith* v. *Lansing*, 22 N. Y. 520 (1860).

*Morse on Banks and Banking,* it is said as late as 1917, in the 5th edition (*Carter's*), without qualification, that (Section 48, p. 122, under heading "Deposits"):

> "A bank may receive special, specific, *and general deposits, and give security for them.*" (Italics supplied.)

(3) The Congress itself[2], Territorial legislatures[3], and the legislatures of a great majority of the States of the Union[4], have enacted statutes indicating their understanding that the power here in question is included among the incidental powers of a bank, and their understanding that it was intended by the Congress to be included in the "incidental powers" granted by this Section 8 of the National Bank Act of 1864; and (4) The Comptroller of the Currency appears uniformly to have so held[5].

No suggestion to the contrary appears ever to have been made for more than fifty years after the enactment of the National Banking Act of 1864, or until the Kentucky case

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[2] Section 45 of the same Act of 1864; and various other acts requiring depositing authorities to take collateral security for various kinds of public deposits, e. g. "Federal Reserve Act" of December 23, 1913, c. 6, Section 9, as amended by Act of May 7, 1928, c. 507, 45 Stat. 492; act regulating postal savings funds deposits, August 24, 1912, c. 387, Sec. 1, 37 Stat. 512, and Act of May 18, 1916, c. 126, Sec. 2, 39 Stat. 159; acts regulating deposits of funds of Indians, March 3, 1911, c. 210, Sec. 17, 36 Stat. 1070, and May 24, 1918, c. 86, Sec. 28, 40 Stat. 591; deposits of proceeds from sales of Liberty bonds, certificates of indebtedness and war savings certificates, September 24, 1917, c. 56, Sec. 8, 40 Stat. 291; October 3, 1917, c. 63, Sec. 214, 40 Stat. 308; April 4, 1918, c. 44, Sec. 5, 40 Stat. 504; Federal Farm Loan Act, July 17, 1916, c. 245, Sec. 6, 39 Stat. 365; deposits of money of bankrupt estates, Act of July 1, 1898, c. 541, Sec. 61, 30 Stat. 562; deposits of certain securities in lieu of surety bonds, Act of February 24, 1919, c. 18, Sec. 1320, 40 Stat. 1148, as amended by Act of November 23, 1921, c. 136, Sec. 1329, 42 Stat. 318; Act of June 2, 1924, c. 234, Secs. 2 and 1029, 43 Stat. 253, 349.

[3] *Philippine Islands,* Act No. 1792 of the Philippine Com-

in 1913 (*Commercial Bank & Trust Co.* v. *Citizens Trust & Guaranty Co.*, 153 Ky. 566, 156 S.W. 160, dealing with a State bank).

2. *Public policy.* It is understandable that the exercise of a power such as that of a bank to give security for deposits might come to be inhibited by reasons of public policy. For example, the power thus to secure private deposits might be said to be inhibited if it should be agreed that overruling considerations of public policy forbid its exercise. The extreme example is that of the power of the British King to veto acts of Parliament, which is really inhibited by universal acquiescence in a contrary public policy.

But, here, as to public deposits, there is the strong countervailing public policy requiring, for the benefit of the public at large, security for public deposits. The various acts of the Congress and of the legislatures of many states requiring that security be given for many different classes of public deposits, are all indicative of that well established public policy.

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mission, October 12, 1907, Sec. 38 (Sec. 506, Compilation of Acts of the Philippine Commission, 1908) reenacted in Section 625, Revised Administrative Code of the Philippine Islands of 1917, quoted on page 4 of the original brief herein for *amici curiae* on behalf of the People of the Philippine Islands; *Arizona Territory*, Act of March 16, 1905, afterwards carried into the State statutes after the admission of Arizona to the Union, as Section 4643, Revised Statutes of 1913, and now into Section 2623 and 2634 of the Revised Code of 1928, *infra*, Appendix, pp. 7-8.
None of these territorial statutes has ever been annulled by the Congress.

[4] *Confer* footnote "1", pages 57, 58 and 59 of the "Brief of Petitioners" herein, collating citations to such statutes in thirty-seven States of the Union, excerpts from some of which statutes by way of examples are quoted in the Appendix hereto, *infra*, pp. 7-14.

[5] *Smith* v. *Baltimore & Ohio R. Co.*, 48 F. (2d) 861, 867; *Pottorf* v. *El Paso-Hudspeth Counties Road District of Texas*, 62 F. (2d) 498 (CCA—V), both quoted on page 18 of the "Brief of Petitioners" herein.

3. *The amendment of* 1930 (c. 604, 46 Stat. 809) to Section 5153, Revised Statutes, which was Section 45 of the National Bank Act of 1864, *is not a repeal* of any part of Section 8 of the Bank Act (Section 5136, Rev. Stat.), nor a limitation on the powers which Section 8 grants to the banks.

The amendment does not carry any words of repeal; its purpose, as shown by the committee reports, was simply to clarify existing law. It is not to be presumed that the Congress intended by indirection, and without express words of repeal, to destroy the long established widely utilized powers of national banks to secure such important public deposits as those of the Territories and of their various political subdivisions; of government corporations such as the Inland Waterways Corporation, the Emergency Fleet Corporation, the Panama Railroad, the United States Spruce Production Corporation, and many others; of deposits of the funds of receivers, of clerks of courts, of Army post exchanges, of funds held for enlisted men of the military services such as "company funds" of the Army; and particularly of the large funds held for many years by many banks throughout the country under deposits by the Treasurer of the Philippine Islands, as security for the stability of the currency of those islands. Had the Congress meant to strike down the security for all those funds it would have put such an intention into no uncertain language. It would not have left it to be gathered by implication from an amendment containing no words of repeal.

4. There are appended excerpts from the statutes of several of the thirty-seven States which are collected in footnote 1, pages 57 to 59 of the "Brief of Petitioners" herein, illustrative of two things: (1) The very common provisions made by State legislatures directing State officials having public funds for deposit to designate *national banks* as well as state banks as public depositories of such public funds deposited under State laws, and to *"require"* such depositories, *national banks* as well as state banks, to give collateral security for such public deposits,—*showing the very general opinion of State legislators that national banks do*

*possess power to give such security*; since, of course, State legislators are not assuming to undertake to grant powers to national banks (*Appendix* I, *infra*, pp. 7-14); and (2) the *public policy* thus widely declared by State legislative authorities of requiring security for deposits of public funds. There are also appended (*Appendix* II, *infra*, pp. 15-23) pertinent extracts from the debate on the floor of the House of Representatives February 21, 1916, upon H. R. 3575, the bill to amend Section 5234 of the Revised Statutes (Section 50 of the National Bank Act of 1864) so as to authorize the Comptroller of the Currency to deposit funds of receivers of insolvent banks in such banks as the Comptroller may select, and to require collateral security for such deposits. The bill as reported by the committee provided for the Comptroller making such deposits only in *national banks*. It was amended on the floor of the House so as to permit such deposits to be made in *State banks* as well. *This is the converse of the picture.* Of course, *the Congress was not assuming to grant powers to State banks;* and the debate shows an apparently universal understanding on the part of all of the members of Congress taking part in it that banks generally,—State as well as national,—possessed the power to give security for such deposits. The amendment permitting such deposits in State banks,—and requiring such collateral security for the deposits—was urged by its proponents as a *privilege or advantage which was sought to be given to the State banks.*

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# APPENDICES

## APPENDIX I

Extracts, by way of examples, from some of the statutes of the 37 States cited in footnote 1, pages 57-59, of the "Brief of Petitioners" in this case.

These excerpts are from some of the States whose statutes expressly mention national banks, as well as State banks, as depositories of various public funds.

**ALABAMA:**

Sections 891, 892 and 893, Alabama Code of 1928:

> "The Governor may designate any bank or trust company incorporated under the laws of this State, or of the United States, * * * as a state depositary * * *." (Sec. 891.)
>
> "Before any bank or trust company shall be designated as a state depositary it shall file * * * an application in writing * * *, and shall accompany its application with a deposit of bonds * * * to be kept and held by the state treasurer * * * as a security * * * that it will well and truly account for and pay any moneys or funds of the state upon the check or order of the state treasurer." (Sec. 892.)
>
> "Upon the filing of such application * * *, and the deposit of bonds * * * the Governor may designate said applicant as a state depositary * * *." (Sec. 893.)

**ARIZONA:**

Secs. 2633, 2634, Revised Code of 1928:

> "The Governor * * * in the case of state moneys, the county treasurer * * * in the case of county moneys, and the town or city treasurer * * * in the case of town or city moneys may appoint and designate one or more banks within the state, doing business under the laws of the state or of the United States, to be a depository * * *." (Sec. 2633, reenacting Section 2, chap. 56, Laws of 1905, by which the territorial legislature of the territory of Arizona had made the same provision.)
>
> "Any bank, before receiving such deposit, shall execute and deliver a bond, * * * or said bank may deposit * * * in lieu of a surety bond, regularly issued and in-

terest bearing bonds of the following character: United States Government bonds * * *." (Sec. 2634, reenacting in substance Section 4643, Revised Statute of 1913, which itself was in substance a reenactment of paragraph 3776 of the Revised Statutes of 1901 of the territory of Arizona, as amended by Section 7 of Act No. 56 of March 16, 1905, Laws of the Territory of Arizona of 1905, p. 111, which provided:

"Any bank desiring to do so, may in lieu of the bond with security * * * deposit * * * interest bearing bonds of the United States, or of this territory or any county of this territory, at par, as security for public moneys * * *.")

**CALIFORNIA:**

(a) *State Funds.*—Act of April 12, 1923, c. 16, Statutes and Amendments of 1923, p. 21, Sections 1, 3 and 4:

"All moneys under the control of the state treasurer * ** shall so far as possible, be deposited by the state treasurer to the credit of the state in such state or national bank or banks in the state as the treasurer, with the approval of the Governor and State Comptroller, shall select * * *: *Provided*, that the bank or banks in which such money is deposited shall furnish security as hereinafter provided * * *." (Sec. 1.)

"There shall be two classes of depositaries; one shall be known as active depositaries and the other as inactive depositaries * * *." (Sec. 3.)

"For the security of inactive deposits, there shall be deposited with the treasurer treasury notes or bonds of the United States, or of this state * * *. For the security of active deposits, there shall be deposited with the treasurer treasury notes or bonds of the United States or of this state * * * or the surety bond or bonds of any corporation or corporations qualified to act as sole surety * * *." (Sec. 4.)

(b) *County and municipal funds.*—Act of April 12, 1923, c. 17, Statutes and Amendments of 1923, p. 25, Sections 1, 3 and 4. (*Substantially the same provisions as those relating to state funds quoted above from chapter 16, supra, enacted the same day.*)

(c) *Irrigation districts.*—Act of April 12, 1927, c. 100, Statutes and Amendments of 1927, p. 188:

"Any money belonging to any irrigation district * * * may be deposited * * *in any state or national bank or banks in this state * * *. Such treasurer or other officer shall require such bank or banks in which such money is deposited to furnish as security for such deposits, bonds of the United States or of the state * * *; or in lieu of such bonds * * * depositary bonds * * * by a surety for * * *."

GEORGIA:

*State Depositories.* Civil Code of 1910, Sections 1249, 1253 and 1256:

"The Governor shall name and appoint a solvent chartered bank * * * in each of the following cities and towns, * * * as state depositories; * * *." (Sec. 1249)

"* * *. In selecting any depository, the Governor * * * may, * * * select any bank chartered under the National Bank Act of the United States, * * *." (Sec. 1253)

"* * *. The bond to be made by the state depositories may be a personal bond or may be made by a deposit with the state treasurer of United States bonds or Georgia state bonds, or either one or both of said methods." (Sec. 1256)

IDAHO:

*a. "Public Depository Law"*, Act of March 12, 1921; Laws of 1921, c. 256, pages 557, *et seq.*, carried without substantial change in the matters here cited into Title 55, Code of 1932:

"Any national bank or any state bank * * * may become a depository * * *." (Sec. 9, p. 559)

"Before designating any bank as a depository the supervising board shall require it to deposit securities or to give bonds * * *." (Sec. 11, p. 560)

"No security shall be accepted by the supervisory board except:

1. United States bonds * * *.

2. Bonds of the State of Idaho.
3. Bonds of any county * * *.
4. Bonds of the depositing unit.
5. Warrants of the State of Idaho.
6. Warrants of the depositing units.
7. Bonds of any association, corporation or company * * * listed in the New York Stock Exchange." (Sec. 12, p. 560)

*b. State funds*, Revised Code of 1909, Sections 127 and 129, carried into the Code of 1932 with amendments as Title 65, Sections 2623, 2625 and 2626.

> "The State Treasurer shall deposit * * * in the state or national banks, or some of them, doing business in this state * * *." (Sec. 127)
>
> "For the security of funds so deposited the State Treasurer shall require all such depositories to deposit securities * * *, or to give bonds * * *." (Sec. 129)

**ILLINOIS:**

*a. State funds*, "An Act in relation to State moneys", Laws of 1919, pp. 954 *et seq.*, Sections 3 and 10 (carried into c. 130, Cahill's 1931 Illinois Revised Statutes):

> "The State Treasurer shall, on the first Monday of February * * * cause a notice to be sent to each regularly established National and State Bank doing business in this State, indicating that * * * he will receive sealed proposals for the deposit of the public moneys in his custody or control. * * *." (Sec. 3, p. 955)
>
> "No moneys in the State Treasury shall be deposited in any bank approved as a depositary under the terms of this Act until such bank shall have deposited securities with the State Treasurer of equal market value to the amount of moneys deposited." (Sec. 10)

*b. Funds of receivers of closed banks*, Laws of 1929, pp. 174 *et seq.*, Section 11, par. 6 (p. 181), carried into paragraph 11, c. 16a, Cahill's 1931 Illinois Revised Statutes, provides that the receiver of a closed bank

> "shall deposit daily all moneys collected by him in any State or National Bank selected by the Auditor, who shall require of such depository satisfactory se-

curities or satisfactory surety bond for the safe keeping and prompt payment of the money so deposited." (Quoted on page 9 of the "Brief of Petitioners" herein.)

**INDIANA:**

*a. Public funds generally.* Act of March 9, 1907, Acts of 1907, pp. 391 *et seq.;* Burns' Annotated Indiana Statutes, Revision of 1914, Sections 7522, *et seq.*, particularly Sections 7531, 7532 and 7533 (being Sections 10, 11 and 12 of the Act of 1907), and Act of March 12, 1929, Acts of 1929, c. 132, p. 437, amending said last mentioned section:

"Immediately after the organizaton of said several boards of finance and the designation by them of public depositories * * * the several county treasurers, the several city treasurers, the several treasurers of the Board of School Commissioners * * * shall make deposit of such funds in the depository or depositories selected by said Board of Finance * * *." (Sec. 10, Act of 1907; Sec. 7531, Revision of 1914.)

"No public funds shall be deposited in any bank * * * unless such institution is subject by law to visitation and examination by the Comptroller of the Currency for the United States Government through national bank examiners, or by the auditor of state through said bank examiners * * *." (Sec. 11, Act of 1907; Sec. 7532, Revision of 1914.)

"The several banks and trust companies in lieu of a personal or surety bond * * * be designated as depositories upon their delivery to the State Board of Finance, or to the several boards of finance * * * the bonds of any county of this State, or issued by any county of this State for the improvement of roads, bonds of the United States, bonds of the State of Indiana, or, bonds issued under and by authority of the Federal Farm Loan Act, or the Federal Intermediary Credit Act, for the full face value * * * and held by the Auditor of State, or by the respective Boards of Finance * * * as security for such deposits * * *." (Sec. 12 of Act of 1907, paragraph 7533, Revision of 1914, as amended by Act of March 12, 1929, *supra.*)

(b) *Deposits of Sinking Fund Commissioners,* Burns' Annotated Statutes, 1926, sections 10314, 10315, 10319, 10321, 10324:

"For the purpose of creating a sinking fund for the gradual extinguishment of the bond indebtedness of any city, the common council thereof * * * may determine to create such fund; * * *". (Sec. 10314).

"The sinking fund * * * shall be under the control of three commissioners, * * *." (Sec. 10350).

"During the month of June of each year, * * * such commissioners shall notify each incorporated bank and trust company in such city of the amount of money then in the sinking fund * * *, and that * * * bids will be received and opened for the selection of a depository * * *." (Sec. 10319).

"The successful bidder shall * * * furnish a bond or security, or bond and securities, * * * conditioned upon the faithful accounting * * * of all moneys which may come into the possession of the depository. * * * The depository may, in lieu of a personal or surety company bond * * * deliver to said sinking fund commissioners the bonds of any county of this state, * * * bonds of the United States, bonds of the State of Indiana, bonds of the city of Indianapolis, or bonds of the school city of Indianapolis, * * * which bonds shall be deposited * * * as surety for such deposits; * * *." (Sec. 10321).

"No depository shall be selected other than an incorporated trust company or a bank incorporated under the laws of the United States or of the State of Indiana." (Sec. 10324).

**LOUISIANA:**

*Public Deposits Generally;* Act of July 11, 1912, Act No. 205, Acts of 1912, pp. 415 *et seq.,* Sec. 1, 2 and 5, carried into Louisiana General Statutes of 1932, Secs. 6632, 6633, and 6639:

"That * * * all funds of the State of Louisiana and of all parishes and municipalities thereof and of all public boards, commissions and bodies * * * shall be deposited daily, whenever practicable, * * *." (Act of 1912, Sec. 1).

"That the fiscal agent or agencies with whom such funds shall be deposited shall be such bank or banks organized under the laws of the State of Louisiana or of the United States and domiciled in this State as may be selected * * *; such bank or banks so selected to give security for the safe keeping and payment of such deposits and to pay interest * * *." (Act of 1912, Sec. 2).

"That the Board of Liquidation of the State of Louisiana and all parishes and municipalities thereof and all public boards, commissions and bodies * * * shall require as security for deposits made by them, the bonds of the United States of America, or of any colonial possession thereof, or unmatured bonds of the State of Louisiana or of any legally organized subdivision or board thereof, * * *. The bonds so furnished as security shall be deposited * * *

"The fiscal agencies and depository banks may, at their option in lieu of depositing bonds, furnish the indemnity bonds of a duly authorized surety company * * *" (Act of 1912, Sec. 5).

MISSISSIPPI:

Hemingway's Annotated Code of 1917, Sections 4191 and 4192 (State Funds); 4234 and 4240 (County Funds); 4250 and 4251 (Drainage District Funds and City and Village Funds).—Carried into 1930 Code as Sections 4324, 4326, 4340, 4346, 4357, and 4358.

"The State Treasurer shall deposit * * * in the state or national bank, or some of them doing business in this state the amount of money in his hands * * *." (1917 Code, *supra*, Sec. 4191)

"Any bank in this state may qualify as a state depository by placing on deposit as security with the state treasurer any of the following securities * * *; Mississippi Registered state bonds; Yazoo and Mississippi Delta Levy District Bonds; Mississippi Levy District Bonds; County bonds, and municipal bonds * * *; United States bonds; or surety bonds of any surety company authorized to do business in the state of Mississippi; * * *." (ib., sec. 4192).

"The amount of money belonging to the * * * county treasurer of each county in the state, shall be kept on

deposit in the state or national banks, or in some of them doing business in the several counties, * * *." (ib., sec. 4234).

"Any bank in a county, * * * may qualify as a county depository by placing on deposit with the county treasurer as security any of the following securities * * *: Mississippi Registered state bonds, * * *, United States bonds, Mississippi Drainage District Bonds, or surety bonds of any surety company authorized to do business in the state of Mississippi, * * *." (ib., sec. 4240)

"All funds * * * belonging to any drainage district shall be deposited in the depositories provided by this act, under the same conditions as county funds * * *." (ib., sec. 4250).

"The board of Mayor and alderman or other municipal authorities of each and every city, town or village in the state is hereby required to select a depositor in the manner provided by law for the selection of county depositors." (ib., sec. 4251)

## APPENDIX II

Debate in the House of Representatives, February 21, 1916, on H. R. 3575, A Bill to Amend Section 5234, Revised Statutes (Sec. 50 of the National Bank Act of 1864). Cong. Rec., Vol. 53, Part 3, pp. 2899-2902.

The bill was read, as follows:

*Be it enacted, etc.*, That section 5234 of the Revised Statutes of the United States be amended by adding at the end thereof the following:

"*Provided*, That the Comptroller may, if he deems proper, deposit any of the money so made in any regular Government depositary, or in any national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United States bonds or other satisfactory securities for the safe-keeping and prompt payment of the money so deposited. Such depositary shall pay upon such money interest at such rate as the Comptroller may prescribe, not less, however, than 2 per cent per annum upon the average monthly amount of such deposits."

THE SPEAKER. Is there objection to the consideration of the bill?

MR. MANN. Reserving the right to object, I would like to have the gentleman in charge of the bill make an explanation of it.

THE SPEAKER. The gentleman from Massachusetts, Mr. Rogers, is the author of the bill.

MR. ROGERS. Mr. Speaker, this bill is to remedy an apparent injustice and an unbusinesslike practice which have prevailed for a good many years. A national bank fails in some city of the United States and a receiver is appointed by the Comptroller of the Currency, who proceeds to collect the assets. As fast as he collects the assets he turns them over to the Treasurer of the United States to the order of the comptroller, and they are retained by the Treasurer of the United States until the receiver has sufficient funds with which to pay a dividend. That may be weeks or months, or, in the case of protracted litigation, even years. The money lies in the Treasury of the United States without drawing a cent of interest, and the depositors are thus penalized in addition to the penalty which frequently follows as the result of the bank ultimately

proving insolvent. Further, the money which formed the assets of the national bank in question is taken out of the community just at a time when the community needs its funds most. Stringency in the financial resources of the city or town and consequent additional failures often result.

* * *

MR. MANN. Now, the gentleman gives as a reason if a national bank in a small city fails that to take the money out of the city would be a great detriment to the community. But there are a great many cities which have only one national bank, but which have other banks, namely, State banks. Why does the proposition come to deposit this money in a national bank which in the ordinary case where it would make any difference means that the money will be taken out of that city and deposited in a national bank in another city? In a large city this would not amount to anything one way or another, so far as the money is concerned.

MR. ROGERS. I followed that course because of the suggestion of the Comptroller of the Currency. Of course, I desired to draft a measure which would meet the approval of the comptroller and the Secretary of the Treasury. I do not know whether they would approve, for their part, such a suggestion as the gentleman has in mind. I suppose their theory may be that there is an additional measure of security in the case of deposits in a national bank over and above that which results in the case of money deposited in a State bank.

MR. MANN. The statement is "United States bonds or other satisfactory security."

MR. ROGERS. Is it not possible that their theory is that they have a direct personal control over national banks which is necessarily lacking over State banks?

MR. MANN. Oh, well, I know why they do not approve the deposit of money in banks other than national banks. It is because they are seeking to use force in every way they can to compel the banks—State banks and trust com-

panies—to come into the Federal Reserve System. Every place they can they knock. "Knock," the most offensive term, is the proper term to apply. They knock every effort made to do anything or deposit money in a State bank or trust company.

MR. PLATT. Mr. Speaker, will the gentleman yield?

MR. MANN. I have not the floor.

MR. ROGERS. I will yield to the gentleman.

MR. PLATT. The gentleman says a great many cities have only one national bank, but this would not make any difference in a large city. There are many cities of 10,000 inhabitants and more that have two or three national banks, and some have even four or five.

MR. MANN. It would help those. But that is no reason for not helping a city that has only one national bank. * * *

MR. SMITH of Minnesota. Mr. Speaker, I feel it would not be wise for the national banking system to authorize deposits of funds in the State banks over which the Federal Government has no control or inspection. I believe that is the reason for the limitation in the bill under consideration.

MR. MANN. The gentleman knows that we have in recent years authorized the deposits of national funds in State banks.

MR. SMITH of Minnesota. Under proper security.

MR. MANN. Yes; and proper security is provided here.

MR. SMITH of Minnesota. Even though that may be so, I do not believe it is good policy.

MR. MANN. Well, that is a question. When we passed the bill there was no one here who raised any dissent. * * *

MR. ROGERS. It is important to add, as to the practical effect of the bill, that today, in case of a receivership of a national bank, there is no provision for interest as to any of the funds which are collected. This being so, the depositor does not care what the disposition or location of the fund is; he is kept out of his interest just the same, wherever it goes.

MR. NORTON. I think that is a correct statement. I do not think there is any difference in handling the cash or the other funds received from the sale of property of a defunct national bank. If the funds of a national bank that has failed are deposited in any other bank, the receiver now would be held liable under his bond for such funds. That is the practical part of it. Would the gentleman from Massachusetts have any objection to an amendment providing that the funds might be deposited in a State bank as well as a National bank?

MR. ROGERS. Only this. This bill has met with the approval of the Secretary of the Treasury and the Comptroller of the Currency; and, while I should not personally object to it, I am not quite sure that there is not some objection that I do not know about, not being an expert in such matters. I certainly shall not oppose any amendment of that kind.

MR. SLOAN. Will the gentleman yield?

MR. ROGERS. Yes.

MR. SLOAN. The gentleman seems to concede the suggestion of the gentleman from Minnesota (Mr. Smith) that we would discriminate in such matters in favor of national banks against the State banks. Does the gentleman think that should be done in a large community, considering the number of State banks providing additional means of security over the national banking system?

MR. ROGERS. I did not mean to concede the suggestion. I said the bill in this form had been approved by the Secretary of the Treasury and the Comptroller of the Currency, and that I therefore hesitated to adopt any material change without knowledge of their attitude toward it.

MR. SLOAN. But we do the legislating, do we not?

MR. ROGERS. Precisely.

MR. SLOAN. And we are not obliged to follow the executive department.

MR. ROGERS. If the gentleman will permit me, I think, upon reflection, that the suggested change ought to be

wholesome because, as the gentleman from Illinois said, there is abundant provision for security which must be exchanged for any such deposit in any bank.

Mr. Sloan. In many counties in my State there are no national banks, and they are becoming less for a number of reasons, one of which is that the State banks provide for additional security for depositors beyond that provided by the national banking system, and if that is the case it does not seem fair to the State banking institutions that the Government should discriminate in the deposits of its funds. Further, I would suggest that this bill apparently is in the interest of the depositors, and being vouched for by the Secretary of the Treasury as he emphasizes it, does not the gentleman think that in the interest of depositors under the national banking system it would be salutary legislation to have a system either compulsory or voluntary guaranteeing bank deposits as they do in some States? In some States it is compulsory, and in others they authorize an organization or association for guaranteeing bank deposits, both of which would materially strengthen the depositors, so that if there is a failure it would be bankers and others that would be interested, but the depositors would draw the funds and draw them promptly.

Mr. Rogers. I would refer that question respectfully to the Committee on Banking and Currency and keep it comfortably clear of this particular measure.

Mr. Wingo. Will the gentleman yield?

Mr. Rogers. Yes.

Mr. Wingo. The gentleman from Nebraska (Mr. Sloan) suggests that there is a discrimination. There is no discrimination in this proposed bill. I am opposed in any discrimination against the State banks, as is the gentleman from Nebraska, but I think the present law is such if you strike out the word "national" in line 8 of the bill, the present law would require these deposits to be made in the national banks on account of the provisions that were made in the act revising the banking and currency law.

Of course it is contended by those who procured the passage of the banking and currency act that the United States Government should not undertake to deposit any funds under its control in any institution except one chartered by it. So I should think if you cut out the word "national" you would still be confronted by the provision on the statute books which would require the comptroller to deposit the funds in a national bank.

It is not intended by this bill to make any discrimination; it is following the general law. The truth of the thing is, and the whole milk in the cocoanut is, although it goes about it in a roundabout way, the whole object is to require interest to be paid on the deposit of the funds held by the receiver of a national bank. That is the real purpose of the act and the only effect it will have.

Mr. Smith of Minnesota. Mr. Speaker, reserving the right to object, I am afraid my distinguished friend from Nebraska (Mr. Sloan) has misinterpreted my statement. I would be the last one to stand for discrimination against a State bank. What I meant to convey was the fact that this is a fund belonging to a national bank, belonging to the national banking system, and that there is no reason for turning it over to a State bank that is entirely under another jurisdiction and belonging to another system. If this was a Government fund I should say the State banks should be treated the same as a national bank; but it is a fund that belongs to the national banking system, and it should not be turned over to another system where there is no inspection by the National Government and it is not under the control of the Federal Government.

Mr. Sloan. While it may have started in a system belonging to the national banks, it is a fund belonging to the local depositors, and has no relation to the funds of a national bank. If I understand the scope of the bill, it is simply taking care of the money belonging to the depositors, and it ought to be in the community where it belongs.

Mr. Smith of Minnesota. But that depositor saw fit to

patronize the national banking system, and the Government should not step in and turn it over to the State banking system. It should be continued in the system in which it started.

THE SPEAKER. Is there objection? (After a pause). The Chair hears none. This bill is on the Union Calendar. * * *

MR. NORTON. Mr. Speaker, I have an amendment which I desire to offer, which I send to the desk and ask to have read.

THE SPEAKER. The gentleman from North Dakota offers an amendment, which the Clerk will report.

The Clerk read as follows:

Page 1, line 8, after the word "any", insert the words "state or".

MR. NORTON. Mr. Speaker, the amendment which I offer will in its effect permit the comptroller to place these funds in any State bank or in any National bank. I can not think of any good reason why the comptroller should not place these funds in a State bank in a town in which a National bank may have failed, providing sufficient security for the deposits be given to the Federal Government by the State bank. I do not believe we should longer proceed in this legislative body to enact legislation that will discriminate against the State banks of the country. One of the most able and distinguished bankers in the State of Minnesota, a man who has charge of one of the largest banking institutions in that State, told me a few months ago that the Secretary of the Treasury, while on a trip to the Pan Pacific International Exposition, and while incidentally making political speeches through the Western States, in going through the State of Montana spoke on the banking situation of the country in one of the largest cities of Montana. He was the guest while in this city of one of the officers and directors of one of the largest and strongest banks in Montana. The banker gathered together the business men of the city at a large banquet to do honor to the Secretary of the Treasury, as the son-in-law of President Wilson, and as his chief representative in the Cabinet. In

the course of the evening at this banquet Secretary McAdoo stated, as my informant told me, that he believed every State bank of the country should join the Federal reserve system, and further made the startling statement that he did not consider it safe for depositors to place their money in State banks. You can probably imagine how such a statement was received by the gathering that evening.

The Minnesota banker to whom I talked told me that those attending the banquet were surprised as they never had been in their life before. They had never imagined, he said, that a man, occupying the high position occupied by Mr. McAdoo would make any such an outrageous statement concerning the State banking institutions of the country. My study of this question leads me to believe that in any further banking legislation we may enact we should not enact provisions of law such as are proposed by this bill. There is no good reason why we should deliberately discriminate against State banks.

MR. SLOAN. Mr. Speaker, will the gentleman yield?

MR. NORTON. Yes.

MR. SLOAN. Is it not a fact that of all the 12 regional banks of the country only a few have paid expenses during the last year, and that only one of them has paid a dividend, and that into such organizations as that the Secretary of the Treasury is trying to drive the State banks of the country to put their money by the millions, into cold storage?

MR. NORTON. Mr. Speaker, I will say to the gentleman in reply that I do not know as to whether the Federal reserve banks have been largely profitable in dividends or not. Whether they have or not, I am firmly convinced that the Federal reserve banking system is a good one and that is rendering a splendid and valuable service to the commercial banking business of the country, and will continue to render such service. But because The Federal Reserve System has proven successful or otherwise is not any reason why we should enact legislation discriminating against the State banks of the country.

MR. WINGO. Mr. Speaker, I hope the amendment pending will be adopted, for practical reasons. The gentleman from Illinois (Mr. Mann) has already suggested an illustration that will show the practical necessity for the amendment that is now pending, and that is this: Suppose in a small community where there are only two banks, one a State bank and the other a national bank, which is frequently the case in towns of from one to two or three thousand people, and suppose the national bank should fail. If the amendment offered be adopted, then if in the opinion of the Comptroller the State bank that is left as the only bank in that community can give proper security, the funds that really belong to the community could be kept in it and deposited in the State bank. Of course, if it were not a safe institution, if it could not give the proper security, the Comptroller would not be required to deposit the money there, but he should be permitted to keep those funds in the local community as far as possible. For that reason I hope the amendment will be adopted.

(Congressional Record, Volume 53, Part 3, pp. 2899-2902, 64th Cong. 1st Session.)